

Objection Deadline: June 17, 2009

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Chapter 11

General Motors Corp., et al.,

Case No. 09-50026 (REG)
(Jointly Administered)

Debtors.

**LIMITED OBJECTION OF A.W. FARRELL & SON INC.
TO THE NOTICE OF (I) DEBTORS' INTENT TO ASSUME AND
ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES
OF PERSONAL PROPERTY AND UNEXPIRED LEASES
OF NONRESIDENTIAL REAL PROPERTY AND
(II) CURE AMOUNTS RELATED THERETO**

A.W. Farrell & Son Inc. and its wholly owned subsidiary Jameson Roofing Co., Inc.
(collectively, "AWF"), by its undersigned counsel, hereby objects on a limited basis
("Objection") to the Notice of (I) Debtors' Intent to Assume and Assign Certain Executory
Contracts, Unexpired Leases of Personal Property and Unexpired Leases of Nonresidential Real
Property and (II) Cure Amounts Related Thereto dated June 6, 2009 ("Notice"). AWF objects to

the Notice because it does not accurately state the Cure Amount¹ due to AWF. In further support of its Objection, AWF respectfully states as follows:

Background

1. On June 1, 2009 (“Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).
2. On June 1, 2009, GM also filed a motion seeking an order approving bidding procedures to sell substantially all of its assets, which included a procedure for the Debtors’ assumption and assignment of executory contracts (Docket No. 92) (“Procedures Motion”).
3. On June 2, 2009, the Court granted the Procedures Motion with respect to the sale procedures, including the procedure for assuming and assigning contracts to Vehicle Acquisition Holdings LLC (“VAH”) or the ultimate purchaser of the Debtors’ assets (Docket No. 274) (“Procedures Order”), which provided for sending a notice advising a contract counterparty that it is party to an Assumable Executory Contract and the Cure Amount related thereto.
4. On June 8, 2009, AWF received the Notice dated June 6, 2009 provided for in the Procedures Order. Pursuant to the Notice, parties have ten days from the date of the Notice to object to the assumption and assignment of any Assumable Executory Contract proposed to be assumed and assigned or to the Cure Amount proposed to be paid with respect thereto.

¹ Capitalized terms not expressly defined herein have the meaning ascribed to them in the Notice.

5. Attached to the Notice is a user identification number and password to be used by AWF on the designated website (“Web Site”) to view which contract has been designated an Assumable Executory Contract by the Debtors and the Cure Amount with respect to such contract.

6. Pursuant to the Web Site, the following are Assumable Executory Contracts to which AWF is a counterparty: GMS99594, GMS28562 and GMS28563 (“AWF Contracts”). The Debtors allege that the Cure Amount associated with the AWF Contracts is \$85,116.00 and supplied the schedule annexed as Exhibit A in support of their allegation.

7. AWF asserts it is owed \$138,375.00 in Cure Amount and the detail substantiating AWF’s claim is attached as Exhibit B.

Objections

8. AWF objects to the Notice on the following grounds:

A. The AWF Contracts cannot be assumed without concurrent cure of all arrearages. “Section 365(b) of the executory contracts section of the [Bankruptcy] Code requires a debtor to cure pre-petition defaults as a precondition of assuming an executory contract.” In re Stoltz, 315 F.3d 80, 86 (2nd Cir. 2002). The pre-petition cure amount alleged by the Debtors to be owed to AWF pursuant to the AWF Contracts is understated by \$53,259.00. The Debtors are missing one invoice (invoice #0104502-2) in the amount of \$53,259 dated May 22, 2009 from their calculus of the Cure Amount.

B. The AWF Contracts cannot be assumed or assigned without an adequate showing of future performance. 11 U.S.C. § 365(b)(1); In re Luce Industries, Inc., 14 B.R. 529 (S.D.N.Y. 1981) (court erred in allowing debtor to assume agreement without assurance by debtor that arrearages would be paid and that debtor could perform). Although adequate assurance of future performance may have been established

in the Procedures Motion and other pleadings filed in this case as it relates to VAH, the proposed assignee may not yet even be known, much less is its ability to perform established.

9. AWF reserves its right to amend this Objection to include any additional facts as may be determined by its further investigation of the Notice and AWF Contracts.

10. Any reply to this Objection should be served upon Phillips Lytle LLP, 3400 HSBC Center, Buffalo, New York 14203, Attn: Angela Z. Miller, Esq.

Memorandum of Law

11. Because the legal points and authorities upon which AWF relies for purposes of this Objection are incorporated into the Objection, AWF respectfully requests that the Court deem satisfied or, alternatively, waive any requirement of the filing of a separate memorandum of law.

Reservation of Rights

12. AWF reserves the right (a) to amend, supplement, or otherwise modify this Objection and all attachments and exhibits hereto as necessary or proper; and (b) to raise such other and further objections to any proposed assumption and assignment, and/or the Cure Amount with respect to the proposed assumption and assignment of the AWF Contracts.

Conclusion

WHEREFORE, AWF respectfully requests that the Court enter an Order (a) sustaining this Objection in its entirety and overruling the Notice to the extent it requests relief inconsistent with this Objection, and (b) providing AWF with such other and further relief as is appropriate.

Dated: June 12, 2009
Buffalo, New York

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Doc # 01-2299685.1